EXPLANATORY MEMORANDUM TO

THE ADMINISTRATIVE FORFEITURE OF CASH (FORFEITURE NOTICES) (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2015

2015 No. 1854

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the Administrative Forfeiture of Cash (Forfeiture Notices) (England and Wales) Regulations 2015 (SI 2015/857). Those Regulations support the provisions in section 297A to 297G of the Proceeds of Crime Act 2002 (c. 29) ("POCA") relating to the forfeiture of detained cash. Under those provisions, a senior officer can give a "forfeiture notice" to persons with an interest in cash that has been seized and detained, informing them of the intention to forfeit that cash without a hearing before a magistrates' court. The Administrative Forfeiture of Cash (Forfeiture Notices) (England and Wales) Regulations 2015 set out to whom and how a "forfeiture notice" is to be given and what it must contain.

2.2 These Regulations amend those earlier Regulations to provide for the manner in which a forfeiture notice is to be given to a person outside the United Kingdom.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 A forfeiture notice to be served on a person resident in a country outside the United Kingdom will be sent by post to the person's home address unless that country has made a relevant declaration under a specified Council of Europe Convention that service must be via a central authority (or some other method). If that country agrees, a forfeiture notice will be served directly on the person.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Chapter 3 of Part 5 of POCA makes provision for the recovery of cash in summary proceedings before a magistrates' court. The legal proceedings are civil in nature, and are against the cash not a person ("in rem" proceedings). Therefore proceedings do not require the criminal conviction of a person.

4.2 Sections 289 to 293 of POCA make provision for search powers and related safeguards necessary to support the powers to seize cash under section 294. Sections

295 and 296 make provision relating to the detention of cash and section 298 provides the magistrates' courts with the power to order forfeiture of the cash if it is satisfied that the cash is the proceeds of, or intended for use in, crime.

4.3 Sections 297A to 297G of POCA make provision for the administrative forfeiture of cash without a hearing before a magistrates' court. The cash must have been seized and detained by order of a magistrates' court under section 295. A senior officer (as defined in section 297A(6) and (7)) in the agency that seized the cash can give a "forfeiture notice" for the purposes of forfeiting the cash.

4.4 Section 297A(3) of POCA requires that the Secretary of State make regulations about how the forfeiture notice is to be given. Under section 297A(5), the notice must be given, where possible, to every person who was given notice of the order of a magistrates' court under section 295 to detain the cash. Under section 297A(4), the regulations can make provision for various matters.

4.5 These Regulations make provision for the giving of a forfeiture notice outside the United Kingdom in the same manner that a judicial document is to be given under a relevant declaration made under a Council of Europe Convention relating to the recovery of the proceeds of crime.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Chapter 3 of Part 5 of POCA makes provision for the summary recovery of criminal cash in civil proceedings before the magistrates' courts. Section 65 of the Policing and Crime Act 2009 inserted sections 297A to 297G into POCA to allow for the administrative forfeiture of cash in uncontested cases. These provisions build in safeguards to ensure that those with any interest in the cash have their rights protected. Safeguards include express detailed rules set out in regulations made under section 297A on how notice of the intention to forfeit the cash ("forfeiture notice") is given. Section 297B sets out what a forfeiture notice must contain.

7.2 The Administrative Forfeiture of Cash (Forfeiture Notices) (England and Wales) Regulations 2015 already contain detailed rules to ensure that the giving of a forfeiture notice is fair and subject to safeguards. These amending Regulations make specific provision for the giving of a forfeiture notice to a person who resides outside the United Kingdom if the state in which the person resides has made a relevant declaration under one of two Council of Europe Conventions that relate to recovering the proceeds of crime.

8. Consultation outcome

8.1 No formal public consultation has been carried out.

9. Guidance

9.1 No guidance will be issued in relation to this instrument; however it will form part of a package of learning issued by the Proceeds of Crime Centre in the National Crime Agency. They have responsibility for the training and monitoring of all financial investigators.

10. Impact

10.1 Chapter 3 of Part 5 of POCA already applies to business, charities and voluntary bodies, this new provision will not add to the impact.

10.2 There is no impact on the public sector. Forfeiture notices would need to be served on persons outside of the United Kingdom in any event, these Regulations set out the applicable procedure.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 Chapter 3 of Part 5 of POCA already applies to activities that are undertaken by small business, this provision will not add to the impact.

12. Monitoring & review

12.1 The service of forfeiture notices will be monitored by the Home Office.

13. Contact

13.1 Stephen Goadby at the Home Office Tel: 020 7035 1559 or email stephen.goadby@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.